

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

FIDELITY AND DEPOSIT COMPANY,  
OF MARYLAND, a Maryland Corporation,

Case No. 13-CV-1291

Plaintiff,

v.

EDWARD E. GILLEN COMPANY, GARY A.  
JACKSON, JULLANE J. JACKSON, and  
DLH CONSTRUCTION AND TRUCKING, INC.,

Defendants.

---

**AFFIDAVIT OF SCOTT R. HALLOIN IN SUPPORT OF DEFENDANTS EDWARD E. GILLEN COMPANY'S, RESPONSE TO FIDELITY AND DEPOSIT COMPANY OF MARYLAND'S CROSS MOTION FOR SUMMARY JUDGMENT AND REPLY TO THE MOTION FOR SUMMARY JUDGMENT OF EDWARD E. GILLEN CO.**

---

STATE OF WISCONSIN            )  
  ) ss  
MILWAUKEE COUNTY            )

I, Scott R. Halloin, Esq., being first duly sworn on oath, depose and state as follows:

1. I am one of the attorneys at the law firm of Halloin Law Group S.C., which represents the defendants in this matter. I make this affidavit on personal knowledge. This lawsuit relates to a number of third and fourth tier subcontractor bond claims relating to the 31<sup>st</sup> Street Breakwater project in Chicago, Illinois. The general contractor for the project was Paschen Gillen Skipper Marine Joint

Venture. Edward E. Gillen Company (“Gillen”) was its subcontractor, and DLH Construction & Trucking, Inc. (“DLH”) was Gillen’s sub-subcontractor. Gillen and DLH have filed claims in Cook County Circuit Court case number 12-CH-417 asserting that the general contractor for the project, Paschen Gillen Skipper Marine Joint Venture, misappropriated funds from draw requests 14–18 submitted to the owner, the Public Building Commission of Chicago (“PBC”), that were otherwise due these third and fourth tier subcontractors (whose claims are at issue in the Eastern District of Wisconsin action). Thousands of pleadings have been filed in Cook County case number 12-CH-417 and the consolidated cases. Each third and fourth tier subcontract bond claim has specific affirmative defenses unique to the claim, as detailed in this affidavit, and these claims have been consolidated with Circuit Court case number 12-CH-417. In addition, Gillen and DLH have globally asserted the following: (1) pay-when-paid defenses to each of the third and fourth tier subcontractor claims; and (2) and that marine work is not lienable or subject to bond claims under Illinois law. In addition, DLH asserts that fourth tier subcontractors cannot assert bond claims under Illinois law.

2. Attached hereto as Exhibit A is a true and correct copy of DLH Construction & Trucking, Inc.’s First Amended Counterclaim.

3. Attached hereto as Exhibit B is a true and correct copy of the Intervenor Complaint of Edward E. Gillen Marine, LLC, as Assignee of Edward E. Gillen Company, Against Kindra Lake Towing, LP, without exhibits.

4. Attached hereto as Exhibit C is a true and correct copy of Edward E. Gillen Co.'s and DLH Construction and Trucking, Inc.'s Response to Kindra Lake Towing, LP's Motion For Summary Judgment, without exhibits.

5. Attached hereto as Exhibit D is a true and correct copy of DLH Construction & Trucking, Inc.'s responses to Paschen Gillen Skipper Marine Joint Venture's First Set of Interrogatories in *Kindra Lake Towing, LP, et al. v. Edward E. Gillen Co., et. al.* Cook County case number 12-CH-17679.

6. Attached hereto as Exhibit E is a true and correct copy of Edward E. Gillen Company's Response to Paschen Gillen Skipper Marine Joint Venture's First Set of Interrogatories in *Kindra Lake Towing, LP, et al. v. Edward E. Gillen Co., et. al.* Cook County case number 12-CH-17679.

7. Attached hereto as Exhibit F is a true and correct copy of Edward E. Gillen Company's Response to Paschen Gillen Skipper Marine Joint Venture's First Set of Interrogatories in *Kindra Marine Terminal, Inc., et al. v. Edward E. Gillen Co., et al.* Cook County case number 12-CH-17668.

8. Attached hereto as Exhibit G is a true and correct copy of Defendant Edward E. Gillen Company's, By Its Assignee Edward E. Gillen Marine, LLC, Amended Verified Answer to Complaint To Foreclose A Mechanic's Lien on Public Funds and For Other Relief, Affirmative Defenses, and Third-Party Complaint Against Paschen Gillen Skipper Marine Joint Venture in *American Marine Constructors, Inc. v. Edward E. Gillen Co., et al.* Cook County case number 13-CH-35905, without exhibits.

9. Attached hereto as Exhibit H is a true and correct copy of Gillen's and DLH's Memorandum in Support of Its Global Motion for Summary Judgment relating to the settlement in the Consolidated Cook County case number 12-CH-417.

10. Attached hereto as Exhibit I is a true and correct copy of Defendants Edward E. Gillen Company's and DLH Construction and Trucking, Inc.'s Verified Answer and Affirmative Defenses to Amended Complaint of Basic Towing, Inc. To Enforce Mechanics Lien and For Other Relief in *Basic Towing, Inc., et al. v. Edward E. Gillen Co., et al.* Cook County case number 12-CH-22630.

11. Attached hereto as Exhibit J is a true and correct copy of Defendant Edward E. Gillen Company's Response to Central Boat Rentals, Inc.'s First Set of Interrogatories in *Basic Towing, Inc., et al. v. Edward E. Gillen Co., et al.* Cook County case number 12-CH-22630.

12. Attached hereto as Exhibit K is a true and correct copy of Defendants Edward E. Gillen Company's and DLH Construction and Trucking, Inc.'s Verified Answer and Affirmative Defenses to Amended Verified Complaint to Foreclose on Public Funds and For Other Relief in *Kiel Sand Stone Products, Inc. v. Edward E. Gillen Co., et al.* Cook County case number 12-CH-16709.

13. Attached hereto as Exhibit L is a true and correct copy of the May 4, 2017 Order in Cook County Consolidated Case Number 12-CH-417.

14. Attached hereto as Exhibit M is a true and correct copy of the September 30, 2016 Deposition Transcript of Jullane Jackson, taken in Cook

County Consolidated case number 12-CH-417. This deposition was taken as part of Gillen's Global Motion for Summary Judgment and related to payments to be made under a mediated settlement negotiated in the case which needed to be confirmed by the judge handling Cook County case number 12-CH-417. No deposition discovery on the merits of the subcontractor lien and bond claims has been taken in the consolidated Cook County cases.

15. Attached hereto as Exhibit N is a true and correct copy of the July 16, 2015 report of Stephen VanderBloemen.

16. Attached hereto as Exhibit O is a true and correct copy of the September 25, 2015 report of Stephen VanderBloemen.

FURTHER AFFIANT SAYETH NAUGHT.

s/ Scott R. Halloin  
Scott R. Halloin, Esq.

Signed and sworn to before me  
this 22nd day of December 2017.

s/ Kimberly M. Finnigan

Notary Public, State of Wisconsin

My commission expires December 4, 2020.

S:\Clients\Gillen\Eastern District of Wisconsin\Eastern District of Wisconsin (Case No. 13-CV-1291)\Pleadings\Aff. SRH  
Supp. MSJ.docx